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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of:

Docket No. TG-120033

WASTE MANAGEMENT OF WASHINGTON,  
INC. D/B/A WM HEALTHCARE SOLUTIONS  
OF WASHINGTON

**WASTE MANAGEMENT'S RESPONSE  
BRIEF ON PRELIMINARY LEGAL  
ISSUE**

For an Extension of Certificate G-237 for a  
Certificate of Public Convenience and Necessity  
to Operate Motor Vehicles in Furnishing Solid  
Waste Collection Service

**TABLE OF AUTHORITIES**

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**Cases**

*In re Pet'n of Comm'n Staff*, Docket No. TG-970532, Decl. Order at 9-10  
(Wash. Utils. & Transp. Comm'n, Aug. 14, 1998).....1

1 1. Stericycle's and the WRRRA Protestants' recountings of the Commission's early cases  
2 addressing biomedical waste applications conveniently ignore the Commission's most recent and  
3 relevant decisions and policies. Until 1995, as Stericycle describes, the applicants for new biomedical  
4 waste authority successfully identified for the Commission the ways they could provide better service  
5 than the incumbent providers.<sup>1</sup> But 12 years have passed since the last case on which Stericycle or the  
6 WRRRA Protestants relied.<sup>2</sup> Protestants failed to even mention the most recent Commission decisions on  
7 biomedical waste services which reflect the standards and policies which govern today.<sup>3</sup>

8 2. In 1998, the Commission addressed a petition for a declaratory order from Commission  
9 Staff regarding the anticompetitive behavior of biomedical waste haulers. The Commission noted that it  
10 regulates biomedical waste differently from traditional garbage collection. While the latter is  
11 "characterized by monopoly service in a given territory," the Commission has approved overlapping  
12 authority among biomedical waste haulers and "the resulting evolution of a highly competitive market"  
13 for biomedical waste services.<sup>4</sup> The Commission reiterated its deference to shippers' "request[s] to use  
14 a certain company" due to the continued liability for generators arising from the handling of their  
15 biomedical waste.<sup>5</sup>

16 3. Protestants tellingly also ignore the Commission's most recent declaration of policy  
17 regarding biomedical waste collection, in a case that bears Stericycle's name. Last year, in rejecting  
18 Stericycle's challenge to Waste Management's collection of biomedical waste within the Certificate  
19 No. G-237 territory, the Commission reiterated its preference for competition among biomedical waste  
20 haulers. In its prior decisions,

21 the Commission [has] recognize[d] a need for competitive  
22 opportunities in this segment of the industry, which is considered a  
specialized service, in significant part *because of* its public health

23 <sup>1</sup> Stericycle's Memo. ¶¶ 5-15.

24 <sup>2</sup> The most recent case Stericycle and the WRRRA Protestants discuss is Stericycle's own 1995 application. *See id.* ¶ 15  
25 (citing *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G. No. 1761 (Wash. Utils. & Transp. Comm'n,  
26 Aug. 11, 1995)); WRRRA's Initial Brief ¶ 7 (citing *In re Ryder Distribution Res., Inc.*, App. No. GA-75154, Order M.V.G.  
No. 1761 (Wash. Utils. & Transp. Comm'n, Aug. 11, 1995)).

27 <sup>3</sup> Stericycle and the WRRRA Protestants were parties to each of these most recent decisions.

28 <sup>4</sup> *In re Pet'n of Comm'n Staff*, Docket No. TG-970532, Decl. Order at 9-10 (Wash. Utils. & Transp. Comm'n, Aug. 14,  
1998).

<sup>5</sup> *Id.* at 10.

1 and safety implications. That is, the Commission has historically  
2 found that promoting competition in this segment of the industry is  
3 in the public interest because, among other things, it promotes  
4 higher quality of service in terms of protecting the public health  
5 and safety.<sup>6</sup>

6 Unlike the case with neighborhood solid waste collection, “Commission policy has historically  
7 encouraged competition in the provision of biomedical waste services.”<sup>7</sup>

8 4. To effectuate the Commission’s policy in favor of competition, in 2011 it “reaffirm[ed]  
9 the Commission’s determination that opportunities for traditional solid waste collection companies to  
10 enter the field of biomedical waste collection and transportation should be readily available.”<sup>8</sup> The  
11 Commission rejected as inappropriate “the barriers to entry to this particular part of the industry”  
12 advocated by Stericycle, the most dominant biomedical waste hauler.<sup>9</sup> Rather, the public interest is best  
13 served by “competition in this line of business, as consistently recognized by the Commission since the  
14 inception of such specialized services more than two decades ago.”<sup>10</sup>

15 5. In *Stericycle*, the Commission recognized that its past decisions have fostered “a highly  
16 competitive” biomedical waste industry in Washington,<sup>11</sup> and that regulated competition in this line of  
17 business, in and of itself, is vital to the public interest.<sup>12</sup> Competition in the biomedical waste market  
18 coupled with the Commission’s “ample authority to regulate by means other than review under the  
19 public convenience and necessity standards” best serves the specialized nature and risk inherent in  
20 biomedical waste disposal services.<sup>13</sup>

21 \_\_\_\_\_  
22 <sup>6</sup> *Stericycle of Wash., Inc. v. Waste Mngt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mots. For Dismissal &  
23 Summ. Determination ¶ 36 (Wash. Utils. & Transp. Comm’n, July 13, 2011).

24 <sup>7</sup> *Id.* ¶ 37.

25 <sup>8</sup> *Id.* ¶ 38.

26 <sup>9</sup> *Id.* ¶ 39.

27 <sup>10</sup> *Id.* ¶ 38.

28 <sup>11</sup> *Id.* ¶ 39.


<sup>12</sup> *Id.* ¶ 38. It simply is **not** the case that the Commission “has continued to recognize the statutory policy favoring single-  
carrier service in biomedical waste collection.” *Stericycle’s* Memo. ¶ 6.

<sup>13</sup> *Stericycle of Wash., Inc. v. Waste Mngt. of Wash., Inc.*, Docket TG-110553, Final Order on Cross-Mots. For Dismissal &  
Summ. Determination ¶ 40 (Wash. Utils. & Transp. Comm’n, July 13, 2011).

1 6. So, as was the case a year ago, Protestants improperly seek to “raise significant barriers  
 2 to entry to this particular part of the industry.”<sup>14</sup> As described in Waste Management’s opening brief,  
 3 there are major areas throughout the State of Washington where Stericycle has no competition – and  
 4 biomedical waste generators have no service alternatives – and the State’s multi-site generators have no  
 5 meaningful choice for statewide service. Understandably, Stericycle – Washington’s second, but now  
 6 only, statewide biomedical waste hauler – wishes to avoid statewide competition from Waste  
 7 Management. But the Commission’s stated policy and the desires of biomedical waste generators  
 8 demand precisely the opposite result. So long as there is no meaningful competition, an applicant need  
 9 not “demonstrate[] that the service it proposes to provide is different than, or superior to, the services  
 10 the incumbent provider offers or that the incumbent provider is otherwise unwilling or unable to  
 11 provide the service the applicant proposes to offer.”<sup>15</sup>

12 DATED this 22nd day of June, 2012.

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 28 <sup>14</sup> *Id.* ¶ 39.

<sup>15</sup> Prehearing Conference Order ¶ 6.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served this document upon all parties of record in this proceeding, by the method indicated below, pursuant to WAC 480-07-150.

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DATED at Seattle, Washington, this 22nd day of June, 2012.

  
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 Deanna L. Schow